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| 10/750,576 | 12/30/2003 | Jay R. Machael | 77012-325124 | 8920 |
| 58506 7590 06/15/2009 FAEGRE & BENSON LLP PATENT DOCKETING - INTELLECTUAL PROPERTY (77012) 2200 WELLS FARGO CENTER 90 SOUTH SEVENTH STREET MINNEAPOLIS, MN 55402-3901 | | | | |
| EXAMINER WHITE, RODNEY BARNETT | | | | |
| ART UNIT 3636 | | PAPER NUMBER | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/750,576

Applicant(s)

MACHAEL ET AL.

Examiner

Rodney B. White

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5,9-11 and 14-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5,9-11 and 14-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

Applicant's arguments filed 03/16/2009 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 3-6, 9-11, 14, 20-22, 28, 30-31, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Catelas in view of and Lin (U.S. Patent Application Publication No. 2004/0232756 A1) and Heidmann (U.S. Patent NO. 6,616,228 B2).

Catelas teaches the structure as claimed (See Figures 1-12 and specification) including a tiltable back, a rear support, either plate 8 or framework 5 and fluid containing cushion 9, the fluid containing cushion located forward of the rear support, which can be either plate 8 or framework 5, and wherein said fluid containing cushion is sized and dimensioned to be at least co-extensive with the area of a user's lumbar

region but it is not clear if reference number 18 in the Catelas reference is a seal along a top portion, bottom portion, the left side portion and the right side portion. Catelas also does not teach a rear support including a lumbar region defined by a curvature in the rear support, wherein the curvature conforms generally to a user's lumbar region. However, Lin teaches a fluid containing cushion that includes two layers sealed to form a vertically extending central chamber of generally constant width and vertically extending left and right side chambers, each of said chambers being completely sealed from one another, wherein said fluid containing cushion is hermetically sealed (See Fig. 4 and specification at column paragraph [0024]), wherein said fluid containing cushion has a lower region and an upper region, and said cushion comprises one or more channels extending between said lower region and said upper region, the channels being substantially vertical, (See Figures 3 and 5), wherein said fluid containing cushion is made of one or more plastic films selected from the group consisting of vinyl, polyurethanes, polyvinyl chlorides, ethylene vinyl acetates, urethane coated membranes, polyolefins, sarans, and engineered multi-layer films, wherein said seals are seal formed by a method selected from the group consisting of heat sealing, ultrasonic sealing, RF sealing, and adhesives wherein said fluid is selected from the group consisting of air, gas or gas mixtures, liquid, and flowable gel, wherein said cushion comprises a plurality of chambers extending from a lower region of the cushion to an upper region of the cushion, wherein said left side chamber is partially divided by a vertically directed seam; and said right side chamber is partially divided by a vertically directed seam, wherein said left side chamber includes a middle seam extending from

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said seal along said top portion of said cushion; and said right side chamber includes a middle seam extending from said seal along said top portion of said cushion, the layers of the fluid containing cushion are generally impermeable. Hiedamn teaches a chair with an air bladder that also has a rear support 20B including a lumbar region defined by a curvature in the rear support, wherein the curvature conforms generally to a user's lumbar region. It would have been obvious and well within the level of ordinary skill in the art to modify the chair, as taught by Catelas, to include the modifications, as taught by Lin and Heidmann, since such features would allow the chair, specifically the back of the chair, to be adjusted to accommodate a variety of users and provide greater comfort to a person sitting in the chair.

Claims 20 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Catelas in view of Lin and Heidmann as applied to claims 18 and 21-22 above, and further in view of Linder (U.S. Patent No. 6,135,551).

Catelas in view of Lin and Heidmann teaches the structure substantially as claimed including that the layers of the fluid containing cushion are generally impermeable but does not teach that some of the seams that form the central chamber are straight, vertically extending seams. However, Linder teaches seams that are straight and vertically extending seams. It would have been obvious and well within the level of ordinary skill in the art to modify the cushion, as taught by Catelas in view of Lin, to include seams that are straight and vertically extending seams, as taught by Linder,

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since the type of seam used is dependent on the shape and contour desired by the manufacturer or consumer.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Catelas in view of Lin and Heidmann as applied to claims 18 and 21-22 above, and further in view of Jay (U.S. Patent No. 5,369,829).

Catelas in view of Lin and Heidmann teaches the structure substantially as claimed but does not teach that some of the seams have enlarged areas. However, Jay teaches seams with enlarged areas 39" and 36. it would have been obvious and well within the level of ordinary skill in the art to modify the cushion, as taught by Catelas in view of Lin, to include seams with enlarged areas, as taught by Jay, since the enlarged areas of the seams would restrict the amounts of fluid into certain areas of the cushion and thereby reducing the volume of fluid filling material necessary to avoid over-filling certain areas of the cushion which would also reduce the weight of the cushion.

Claims 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Catelas in view of Lin and Heidmann as applied to claims 18 and 21-22 above, and further in view of Herring (U.S. Patent No. 5,634,685) and Chew et al (U.S. Patent No. 6,241,320 B1).

Catelas in view of Lin and Heidmann teaches the structure substantially as claimed but does not teach that the two layers of the fluid containing cushion includes

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multiple layers. However, Herring and Chew et al teach a fluid filled cushion whose layers comprise multiple layers. it would have been obvious and well within the level of ordinary skill in the art to modify the cushion, as taught by Catelas in view of Lin, to include a fluid filled cushion whose layers comprise multiple layers, as taught by Herring and Chew et al, since one layer could be made of a high strength material making the cushion more tear and puncture resistant or multiple layers could also be used to include a more attractive outer layer surrounding the inner, air-tight layer through a range of motion and providing passive automatically adjusted support of a user's lumbar region as said backrest tilts through its range of motion, according to the title and Abstract of the reference, an English version of which is provided with this office action.

Remarks

Applicant argues that the pad structure of the Lin patent application publication (U.S. Patent Application Publication No. 2004/0232756 A1) relates to a pad structure for a baby stroller. However, one of ordinary skill in the art should recognize that a structure or a feature can be applied to seats and chairs of any size. For example, child seats are small seats for toddlers and/or children that use the same concepts, features, and structures of a chair or a vehicle seat that accommodates adults but are made on a smaller scale to accommodate a small child. So, the concepts and features of Lin can be made on a larger scale to accommodate an adult or applied to a cushion intended for

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use by an adult. Applicant should understand that Lin is used as a teaching reference to show that a claimed feature of the present invention is old or has been previously disclosed.

Finally, the Lin publication was used as a secondary reference to modify Catelas (FR 2557441), i.e. to teach structures and features that Catelas lacks. However, Applicant argues that “applying the teachings of either Catelas or Heidmann to the Lin pad structure would render the Lin pad structure unsatisfactory for its standard purpose.” Applicant should have argued the reasons Lin should not have been applied to Catelas. Applicant does the same in arguing why Lin should not have been combined with Heidmann. Again, Lin and Heidmann are not combined. Heidmann is used to teach a concept, feature, or structure that Catelas lacks. Heidmann is not used to modify Lin nor are they combined. Heidmann is used to teach the structure of a “rear support”.

As for new claim 33, it is inherent that fluid in or from an area or region of a bladder-like container where force or weight from a user is applied or contacts, will shift away to another area of lesser volume with room enough to accommodate the entry of the fluid from the area from which it is displaced.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (571) 272-6863.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dunn David can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney B. White/
Primary Examiner
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June 8, 2009